IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 127

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,
vs.
RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

REPLY BRIEF OF PETITIONER

This brief is filed because of the reference of counsel for respondent to a petition for reconsideration and the inclusion in his brief (10 to 13) of the opinion of the lower court in respect thereto. No order was entered in respect to the petition for reconsideration and under the governing State

Court rules and the lower County Court rules, the petition was considered as abandoned when an order was not signed as required by court rule. (*Michigan State Court Rule 19, Sec. 5)—(**Local Court Rule, Wayne County, Michigan, 7, Subdivision (k).)

On page (5) of respondent's brief quotation is made from a letter of July 11, 1952, received from counsel for petitioner. For some reason respondent's counsel did not elect to give the entire contents of the paragraph from which the quotation was made, the omitted portion being "As to your reference to reconsideration proceedings, you are, of course, aware of the fact that no order was ever presented to the Circuit Judge for signature and that no such order was ever prepared or noticed for hearing and that under the Michigan Circuit Court rules if such an order is not presented within ten days the proceedings are considered as abandoned." * * * "Regardless of these facts, if you desire to stipulate the proceedings for reconsideration I will join in such a stipulation with you for what it is worth."

In respect to the State Court briefs filed as exhibits, attention is called to respondent's brief (7) where claim is made of an agreement to file the briefs as part of the rec-

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*State Rule 10, Section 5:

Whenever an order has been granted in any proceeding it shall be noticed and presented for signature within 10 days after the granting of same. If such order is not so presented or time extended by the court, it will be considered as abandoned, and a new application for such order may be made only to the judge granting the original order, or his successor, upon such terms as may appear just and equitable.

**Local Rule 7, Subdivision k:

Whenever an order has been granted in any chancery proceeding, it shall be presented for signature within ten days after the granting of the same. If such order is not so presented or time extended by the court, it will be considered as abandoned and a new application for such order may be made only to the judge granting the original order, upon such terms as may appear just and equitable.

ord. On the contrary, petitioners' counsel advised counsel for the respondent that these briefs could not be filed as part of the record and would be filed separately. Respondent's counsel was later so advised by the Clerk of this court but did not elect to make reference thereto in his brief. In the same letter of counsel for petitioners from which counsel for respondent quoted, the following also appears: "I never stated to you that these briefs would be part of the record. What I did state to you was that in my opinion, the briefs are not a proper part of the record filed in the United States Supreme Court but could be filed separately and this I believe you will find to be true if you check the United States Supreme Court Practice."

The letter of September 5, 1952, referred to on page (8) of respondent counsel's brief was on the stationery of respondent and written in his office at his request and on his representation that in his opinion such a request could be granted. Counsel for petitioner at that time stated that in his opinion the request contained in the said letter of September 5th did not conform to the practice before this court and in order to avoid unnecessary detail being presented here that he, counsel for petitioner, would file an amended brief. This position is consistent with that taken by the clerk of this honorable court referred to on page (9) of respondent's brief: "However, a substitute or amended brief could be filed and I do not believe the jurisdiction of the court would be affected."

We regret the burdening of this court with matters which are not material to the constitutional questions raised. As previously stated were it not for counsel's reference to the abandoned petition for reconsideration this brief would not be filed.

Respectfully submitted,

HUGH FRANCIS,

Counsel for Petitioners.